

## REMARKS

The present amendment is submitted in response to the Office Action dated September 27, 2006, which set a three-month period for response, making this amendment due by December 27, 2006.

Claims 1-8 are pending in this application.

In the Office Action, the specification and claim 1 were objected to for informalities. Claims 1-8 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claim 1 was rejected under 35 U.S.C. 102(b) as being anticipated by GB 2285007A to Muetschle et al. Claims 1-4 and 7 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,675,908 to Frauhammer et al. Claims 5-6 and 8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Frauhammer et al.

In the present amendment, the specification has been amended to address the objection, to add a cross reference to the related priority document, to add standard headings, and to delete reference to the claims.

Regarding the objection to claim 1, specifically, the last two lines of claim 1, the Applicants are unclear as to the basis for this rejection. The last two lines of claim 1 recite that "the striking frequency of the striker (2) is adjustable by controlling the blocking time of the blocking element (2)". The Applicants respectfully submit that this language is not indefinite or unclear under Section 112, second paragraph. The Applicants submit further that the Examiner's proposed language for replacing this language with a recitation that "the striker is

blocked or prevented in its forward motion" would not correctly and completely convey the intended limitation.

The Applicants respectfully request clarification of this objection.

Claim 1 was amended to replace "drill hammer and/or percussion hammer" with "rotary hammer". For practitioners familiar with power tools, the term "rotary hammer" is clear. A rotary hammer is provided with a striking mechanism, so that a rotary hammer is able to drill with impacts.

Claims 7 and 8 were amended to depend from claim 2, rather than claim 1, to provide antecedent basis for "the pressure reservoir".

Turning now to the substantive rejection of the claims, the Applicants respectfully disagree that the Muetschele patent anticipates the subject matter of claim 1. The blocking element (47, 48, see Figs. 2, 5) does not have the function of blocking the striker 17. The function of the blocking element 47, 48 is to damp the return stroke of the intermediate punch 18, as disclosed on page 4, second paragraph, of Muetschele. This blocking element 47, 48 of Muetschele cannot be adjusted in order to control the striking frequency of the striker, as defined in claim 1 of the present application.

Claims 1-4 and 7 also were rejected under Section 102 as being anticipated by Frauhammer et al. Again, the Applicants respectfully disagree on grounds the elements 23, 31 do not possess the function of blocking the striker 17. As provided in column 1, lines 61-64 of Frauhammer, the element 23, 31 has the function of bracing the riveting die 18 on the guide tube 13. The element 23,

31 is not adjustable and, therefore, not able to control the striking frequency of the striker 17.

In conclusion, neither Muetschele nor Frauhammer anticipates the subject matter of claim 1, since neither reference discloses a blocking element, which is adjustable for controlling the striking frequency of the striker, as defined in claim 1.

The Applicants furthermore respectfully submit that neither Muetschele nor Frauhammer is a proper reference under 35 USC 102 pursuant to the guidelines set forth in the last paragraph of MPEP section 2131, where it is stated that “a claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference”, and that “the identical invention must be shown in as complete detail as is contained in the ... claim”.

For the reasons set forth above, the Applicants respectfully submit that claims 1-8 are patentable over the cited art. The Applicants further request withdrawal of the rejections under 35 U.S.C. 102 and reconsideration of the claims as herein amended.

In light of the foregoing amendments and arguments in support of patentability, the Applicants respectfully submit that this application stands in condition for allowance. Action to this end is courteously solicited.

Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss

appropriate claim language that will place the application into condition for allowance.

Respectfully submitted,

**/ Michael J. Striker /**

Michael J. Striker  
Attorney for Applicant  
Reg. No.: 27233  
103 East Neck Road  
Huntington, New York 11743  
631-549-4700